

## **ARTICLE VI RALPH M. BROWN ACT**

Section 1. Public Meetings. ADVISORY GROUPS are advisory bodies that are subject to California's Open Meeting Law, the Ralph M. Brown Act ("Brown Act") (California Government Code Section 54950 through 54963). The intent of the Brown Act is that the actions of public bodies be taken openly and that their deliberations be conducted openly. This is consistent with the goals of the DEPARTMENT and ADVISORY GROUP'S operating pursuant to Council Policy 700-42. Accordingly, ADVISORY GROUPS shall ensure that all meetings are open to the public, properly noticed, and conducted in compliance with each of the Brown Act provisions as identified in this Policy.

Section 2. Violations and Remedies of Brown Act. Some provisions of this Policy are identified as requirements of the Brown Act. The Brown Act includes civil remedies (California Government Code sections 54960 through 54960.5) and criminal penalties (Government Code section 54959) for violation of its provisions. Thus, ADVISORY GROUPS are encouraged to proactively cure violations themselves. This is to prevent legal actions that would void ADVISORY GROUP actions, and it assures good faith, voluntary compliance with the Brown Act.

Both individual MEMBERS, as well as the group, could potentially be subject to civil remedies. Civil remedies may include relief to prevent or stop violations of the Brown Act, or to void past actions of an ADVISORY GROUP, and may in some cases include payment of attorney's fees.

Individual MEMBERS may potentially face criminal misdemeanor charges for attending a meeting where action is taken in violation of the Brown Act, but only if the MEMBER intended to deprive the public of information which the MEMBER knew or had reason to know the public was entitled. Action taken includes collective decisions or promises, and includes tentative decisions, but does not include mere deliberation without taking some action. Alleged violations will be reviewed and evaluated on a case-by-case basis.

Any ADVISORY GROUP, or any of its individual MEMBERS, may seek assistance, as well as training, from the City Attorney to better understand, implement, and comply with the Brown Act.

Section 3. Violations and Remedies of Council Policy 700-42. This Policy provides various remedies for violation of its provisions that are not requirements

of the Brown Act by ADVISORY GROUPS or their elected members. Where an ADVISORY GROUP does not cure a violation by itself, it may forfeit its status as a recognized advisory body and lose its right to indemnification and defense by the CITY.

Alleged Violations by a Member of a Recreation Advisory Group. In the case of an alleged violation of this Policy or an ADVISORY GROUP'S adopted Bylaws by a group MEMBER, the group shall conduct an investigation consistent with the Administrative Guidelines and adopted group Bylaws.

If the ADVISORY GROUP after a thorough investigation, determines that the individual member has violated a provision of Council Policy 700-42 or the group's Bylaws, the group shall, where feasible, seek a remedy that corrects the violation and allows the MEMBER to remain as a MEMBER of the group.

If corrective action or measures are not feasible, the group may remove a MEMBER by a two-thirds vote of the voting MEMBERS, or by a substitute method specified in adopted Bylaws for removing an appointed member. The vote to remove the group member shall occur at a regularly scheduled public meeting subject to the procedures outlined in the Administrative Guidelines and in adopted ADVISORY GROUP Bylaws.

A MEMBER risks loss of indemnification for failure to comply with the non-Brown Act provisions of this Policy or those provisions in the member's own adopted group Bylaws.

Alleged Violations by a Recreation Advisory Group. In the case of an alleged violation of this Policy or adopted Bylaws by an ADVISORY GROUP, or by multiple MEMBERS, the violation shall be forwarded in writing to the City for investigation. The City will engage in a dialogue with the ADVISORY GROUP to determine the validity of the complaint and to seek resolution of the issue or dispute.

If a violation against an ADVISORY GROUP as a whole is proven and there is a failure of the group to take corrective action, the group will forfeit its rights to represent its community as an ADVISORY GROUP recognized under Council Policy 700-42. Such a determination resulting in the forfeiture of a seated group's rights to represent its community shall be based on a recommendation by the DIRECTOR to the City Council.

ADVISORY GROUP shall not forfeit its recognized status until there is an action by the City Council to remove the status. The City Council may also

prescribe conditions under which official recognition will be reinstated.

Aa ADVISORY GROUP found to be out of compliance with the provisions of this Policy that are not subject to the Brown Act, or with its adopted bylaws, risks loss of indemnification [legal protection and representation] pursuant to Ordinance No. O-19883 NS and any future amendments thereto.

## **ARTICLE X DEFENSE AND INDEMNIFICATION**

- Section 1. In Conformance with Authorized Duties. As established by this Policy, the City of San Diego (CITY) hereby agrees to defend and indemnify current and past ADVISORY GROUP members, directors and officers ("MEMBER" or "MEMBERS") from liability for acts of the MEMBER performed while engaged in ADVISORY GROUP duties authorized by this Policy, provided that such acts were performed under the direction, control or supervision of the DEPARTMENT. CITY shall further defend and indemnify the MEMBERS from liability for acts performed in connection with the ADVISORY GROUP acting as a body in conformance with this Policy and the policy guidelines of CITY.
- Section 2. Non-Conformance of Authorized Duties. CITY shall not, however, defend or indemnify any MEMBER or MEMBERS for any acts allegedly occurring: (1) as the result of a criminal act; or (2) in violation of ADVISORY GROUP'S Bylaws or corporate governance documents, or any CITY policy or procedure. Further, the CITY may refuse to defend and indemnify any MEMBER if the MEMBER acted or failed to act because of fraud, corruption, actual malice, or bad faith, or if the MEMBER does not reasonably cooperate with CITY in the defense of any claim or action. Nothing in this Policy shall require CITY to indemnify or defend any MEMBER against a claim for punitive damages, except as and when authorized by City Council pursuant to state law.
- Section 3. Written Requests for Representation. In order to be eligible for defense and indemnification, the ADVISORY GROUP and/or the MEMBER must make a written request for representation to the DIRECTOR within five (5) working days of having been served with the first complaint in any legal action.

## **ARTICLE XI GENERAL PROVISIONS**

- Section 1. No Charge. As long as an ADVISORY GROUP serves as the DEPARTMENT'S officially recognized ADVISORY GROUP for the AREA in compliance with this Policy, ADVISORY GROUP will have the ability to conduct official activities within the AREA without charge. ADVISORY GROUP shall use the AREA for the purposes of conducting ADVISORY GROUP meetings, special events, fundraising activities, and for assisting with coordination of AREA field and facility usage. All such ADVISORY GROUP use of the AREA shall be subject to the prior written approval of the DEPARTMENT in each instance. The rights and responsibilities granted herein are separate and independent from any other use permit or organizational rights and responsibilities of separate park users.
- Section 2. No Nuisance. ADVISORY GROUP shall not use the AREA, in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
- Section 3. Signs. ADVISORY GROUP shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without DEPARTMENT'S prior written consent. If any such unauthorized item is found in the AREA, ADVISORY GROUP shall remove the item within twenty-four (24) hours after notice by DEPARTMENT.
- Section 4. Drug-Free Environment. It is the policy of City that all facilities shall be utilized and operated in a drug-free environment. ADVISORY GROUP shall initially and periodically make this fact known.
- Section 5. No Discrimination. ADVISORY GROUP shall not discriminate or permit discrimination in any manner against any person or class of persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, ethnicity, age, marital status or disability, including without limitation the provision of goods, services facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
- Section 6. Compliance with Law. ADVISORY GROUP shall at all times in conducting obligations and duties under this Policy comply with all applicable laws, rules, regulations, and directives of competent governmental authorities.
- Section 7. California Public Records Act. ADVISORY GROUP shall comply, and shall assist City in compliance, with the provisions of the California Public

Records Act, codified in California Government Code sections 6250-6270, for all documents and records created by or distributed to a majority of the ADVISORY GROUP in connection with a matter subject to consideration by the ADVISORY GROUP at an open meeting.

Section 8. Political Activity. All ADVISORY GROUP activities shall be non-partisan and non-sectarian. The ADVISORY GROUP shall not officially or unofficially participate in, or lend its influence to, the adoption or defeat of any public ballot measure, or the election of any candidate for public office, regardless of whether the nomination or election is partisan or non-partisan. Notwithstanding the forgoing, ADVISORY GROUP may provide a neutral forum for public debate such as at a "candidate forum" and similar events, and the ADVISORY GROUP may endorse non-partisan ballot measures that directly benefit park and recreation facilities and services and which have been official supported by a vote of City Council.

Section 9. Improvements/Alterations. ADVISORY GROUP shall not make or cause any improvements, changes, or alterations to be made to the AREA, or any portion thereof, without prior written approval of the CITY. Any and all improvements, fixtures, structures and installations or additions to the AREA constructed or installed by ADVISORY GROUP shall be the property of City. Except as required by law, City shall not be obligated to make any repair or assume any expense for any improvements or alterations to the AREA.